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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,126	03/04/2002	William Kirby Smith	13515.2US11	5135
23552	7590	02/14/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			CHAMBERS, TROY	
		ART UNIT		PAPER NUMBER
				3641

DATE MAILED: 02/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

JE

Office Action Summary	Application No.	Applicant(s)	
	10/091,126	SMITH ET AL.	
	Examiner	Art Unit	
	Troy Chambers	3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 13 January 2005.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 17-19 and 21 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 17 and 21 is/are rejected.
 7) Claim(s) 18, 19 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 3989027 issued to Kahelin in view of U.S. 3990426 issued to Stokes and established rationales for obviousness. Specifically, Kahelin discloses a pneumatic projectile propulsion apparatus for throwing baseballs and tennis balls. Disclosed therein is a pressure canister 18, an exit tube 60, 88; a hopper 12; and a blower 30 for supplying air to canister 24. Kahelin does not disclose the particulars of the canister, the barrel or the blower. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Kahelin with the particulars necessary to propel a baseball or tennis ball at the claimed speeds, since it has been held to be within the general skill of a worker in the art to select a known material or device on the basis of its suitability for the intended use as a matter of obvious design choice. For example, Stokes recognizes that various velocities can be achieved by varying the particulars of the barrel (col. 4, ll. 60, to col. 5, ll. 5). This reasoning applies equally to the canister since a desired pressure capacity proportional to the dimensions of the can. Moreover, Kahelin (as well as many other cited prior art devices) disclose a standard canister in combination with a standard blower. It would

have been a matter of design choice to provide the device of Kahelin with the particulars of the blower since the applicant has not disclosed that the particulars of the blower solves any stated problems or is for any particular purpose and it appears that the invention would perform equally well with a standard blower of standard amperage.

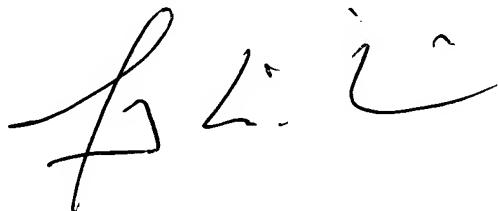
Allowable Subject Matter

3. Claims 18 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Chambers whose telephone number is (703) 308-5870. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone, can be reached at (703) 306-4198.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

A handwritten signature in black ink, appearing to read "Troy Chambers".